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Serial No.: 10/606,271

THE UNITED STATES PATENT AND TRADEMARK OFFICE

First named inventor: **Pekka Pollari**

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Group Art Unit: **3628**

Examiner: **Tonya S. Joseph**

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Sir:

In response to the final Office Action of March 12, 2010, please reconsider the rejections in view of the following remarks:

*****If any fee and/or extension is required in addition to any enclosed herewith, please charge Account No. 23-0442.**

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Cathy Sturmer

(type or print name of person certifying)

REMARKS

Claims 1-3, 5-8, 10, 14-19, 21 and 24 were examined by the Office, and in the final Office Action of March 12, 2010 all claims are rejected. With this response no claims are amended, added or cancelled. Applicant respectfully submits that the Office has committed clear error in rejecting the claims, because the cited references fail to disclose or suggest all of the limitations recited in the claims. Accordingly, applicant respectfully requests reconsideration and withdrawal of the rejections in view of the following discussion.

This response is submitted along with a Notice of Appeal.

Claim Rejections Under § 103

In section 2, on page 4 of the Office Action, claims 1-3, 5-7, 10, 14-16 and 18 are rejected under 35 U.S.C. § 103(a) as unpatentable over Edelman et al. (U.S. Appl. Publ. No. 2002/0029347) in view of Circenis (U.S. Appl. Publ. No. 2003/0135474) and in further view of Emondi (U.S. Appl. Publ. No. 2002/0016748). Applicant respectfully submits that claim 1 is not disclosed or suggested by the cited references, because the cited references fail to disclose or suggest all of the limitations recited in claim 1. The cited references, alone or in combination, at least fail to disclose or suggest that use of the application consumes network resources, and appending to a request for network resources by the application the user identifier stored in the wireless terminal and the application identifier, as recited in claim 1.

The Office asserts on page 2 of the Office Action that the application of Edelman does consume network resources, and refers to paragraph [0110] in particular. However, this section of Edelman merely refers to verification of the presence of a valid smart card. In order to use registered software, when a user attempts to activate the software, the client computer checks to see whether a smart card is inserted, the authentication procedure allows the client program to verify the validity of the smart card without communicating with the registration authority. See Edelman paragraphs [0107] & [0109]. The section referenced by the Office refers to checking for the presence of the smart card after verification. However, this checking does not use network resources, since the application programming interfaces (APIs) are present on the client device and not a remote registration computer. Contrary to the assertions of the Office, the verification is not performed by a remote registration computer, because Edelman specifically states that the procedure allows the client program to verify the validity of the smart card without communication

with the registration authority. See Edelman paragraph [0109]. Therefore, network resources are not consumed by the application when the application checks for the presence of a smart card, because no communication is performed with the registration authority.

The Office further asserts on page 4 of the Office Action that Edelman discloses that the use of the application consumes network resources, and refers to paragraph [0098] of Edelman. However, applicant respectfully disagrees that Edelman discloses that the use of the application consumes network resources, as recited in claim 1. Edelman discusses a daemon constantly running in the background in order to update smart card data. Instead, the automatic updating in Edelman is with respect to the smart card data, and not use of an application. See Edelman paragraph [0098]. The daemon is used to update the smart card data in the background, but has nothing to do with use of the application. Therefore, while updating of the smart card data may consume network resources, Edelman is silent regarding use of applications consuming network resources. In Edelman software products are merely registered with a smart card, and therefore the consumption of network resources by the software products would be independent of the registering and updating of the smart card data. See Edelman paragraph [0096].

The Office further asserts that Edelman teaches appending to a request an application identifier on page 4 of the Office Action. However, Edelman only states that the client program may communicate with the registration authority, and that the registration authority is a server that maintains a licensing database. See Edelman paragraph [0067]. Therefore, Edelman does not disclose or suggest appending to a request for resources an application identifier, since the client program is merely communicating with the registration authority to verify the validity of a smart card. See Edelman paragraph [0068]. Therefore, there is no use of an application that consumes network resources, and accordingly a request for network resources identifying the application that will be used, as recited in claim 1. It necessarily follows that if Edelman fails to disclose applications that consume network resources, then Edelman also fails to disclose a request for network resources for those applications. Furthermore, Edelman only states that the registration information sent to the registration authority includes the unique identifier of the software to be registered. See Edelman paragraph [0080]. However, registration of software is not the equivalent of use of an application, as recited in claim 1. It is irrelevant if the registration of software involves sending a unique identifier, because the limitation of claim 1 is directed to use of network resources by the application, and requesting the network resources.

In addition, Emodi only states that due to the manner in which the tracks are stored on various platforms, the speed with which the tracks can be accessed is increased because the corresponding requests to access the tracks can be more efficiently routed to the appropriate platform. See Emodi paragraph [0026]. However, Emodi is silent regarding whether these requests include the application identifier and user identifier, as recited in claim 1. Furthermore, even if it can be asserted that these requests would inherently include an application identifier, the tracks do not correspond to the application recited in claim 1. While the tracks may consume storage space on the platforms, Emodi does not disclose or suggest that the tracks consume network resources, as recited in claim 1. In addition, Emodi only states that the interface (150) enables user to communicate with the messaging platform (100) via various access devices, and a particular access device transmits data and commands via an access device protocol. See Emodi paragraph [0032]. However, Emodi is silent regarding whether the data and commands include the application identifier and user identifier as recited in claim 1.

Independent claims 14-16 and 18 contain limitations similar to those recited in claim 1. Therefore, applicant respectfully submits that independent claims 14-16 and 18 are not disclosed or suggested by the cited references for at least the reasons discussed above with respect to claim 1.

The dependent claims rejected above ultimately depend from an independent claim, and therefore are not disclosed or suggested by the cited references at least in view of their dependencies.

In section 12, on page 8 of the Office Action, claim 8 is rejected under 35 U.S.C. § 103(a) as unpatentable over Edelman in view of Circenis, and further in view of Emondi and Official Notice. Applicant respectfully submits that claim 8 is not disclosed or suggested at least in view of its dependency.

In section 14, on page 8 of the Office Action, claim 17 is rejected under 35 U.S.C. § 103(a) as unpatentable over Edelman in view of Circenis, and in further view of Emondi and Samjani, "General Packet Radio Service." The additional cited references fail to make up for the deficiencies in the teachings of the references cited against claim 16 identified above. Claim 17 ultimately depends from independent claim 16, and therefore is not disclosed or suggested by the cited references at least in view of its dependency.

In section 16, on page 9 of the Office Action, claim 19 is rejected under 35 U.S.C. § 103(a) as unpatentable over Kunii and Edelman, and in further view of Circenis, CGI and Samjani. Independent claim 19 contains limitations similar to those recited in claim 1. For at least the reasons discussed above with respect to claim 1, the cited references fail to disclose or suggest the limitations of claim 19.

In section 18, on page 11 of the Office Action, claim 22 is rejected under 35 U.S.C. §103(a) as unpatentable over Kunii and Edelman, and in further view of Circenis and Samjani. Independent claim 22 contains limitations similar to those recited in claim 1. For at least the reasons discussed above with respect to claim 1, the cited references fail to disclose or suggest the limitations of claim 22.

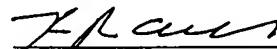
In section 20, on page 13 of the Office Action, claims 21 and 24 are rejected under 35 U.S.C. §103(a) as unpatentable over Kunii in view of Edelman, and in further view of Circenis and Samjani, "General Packet Radio Service." Claims 21 and 24 ultimately depend from an independent claim, and therefore are not disclosed or suggested by the cited references at least in view of their dependencies.

Conclusion

For at least the reasons discussed above, the present application is believed to be in condition for allowance, and such action is earnestly solicited. The undersigned hereby authorizes the Commissioner to charge Deposit Account No. 23-0442 for any fee deficiency required to submit this response.

Respectfully submitted,

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